

0/1
1 BILL NO. S-80-11-21

2 SPECIAL ORDINANCE NO. S-158-80

3 AN ORDINANCE approving an agreement for
4 Engineering Services between the City of
5 Fort Wayne, Indiana and Howard, Needles,
6 Tammen & Bergendoff.

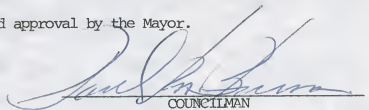
7 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
8 INDIANA:

9 SECTION 1. That a certain agreement dated November 5, 1980,
10 between the City of Fort Wayne, Indiana, by and through its Mayor and
11 the Board of Public Works and Howard, Needles, Tammen & Bergendoff, for:


12 Step 3 Engineering Services for additions
13 and improvements to the Wastewater Facilities
14 Phase A, Phase B, Phase C of the Advanced
Wastewater Treatment Plant,

15 at a total cost of \$464,909.00 of which 75% to be paid for by the
16 United States Environmental Protection Agency, all as more particularly
17 set forth in said agreement which is on file in the Office of the Board
18 of Public Works and is by reference incorporated herein and made a part
19 hereof, be and the same is in all things hereby ratified, confirmed and
20 approved.

21 SECTION 2. That this Ordinance shall be in full force and effect
22 from and after its passage and approval by the Mayor.

23 
24 COUNCILMAN

25
26 APPROVED AS TO FORM AND
27 LEGALITY NOVEMBER 20, 1980.

28 
29 JOHN E. HOFFMAN, City Attorney
30
31
32

Read the first time in full and on motion by Burns, seconded by Salinas, and duly adopted, read the second time by title and referred to the Committee City Health (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on 11-25-80, the 11 day of November, 1980, at 7 o'clock P. M., E.S.T.

DATE: 11-25-80

Charles W. Westerman
CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Salinas, and duly adopted, placed on its passage. PASSED (~~Lost~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>BURNS</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>EISBART</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>GIAQUINTA</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>NUCKOLS</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHMIDT, D.</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHMIDT, V.</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHOMBURG</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>STIER</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>TALARICO</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

DATE: 12-9-80

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. 158-80 on the 9th day of December, 1980.

Charles W. Westerman ATTEST:
CHARLES W. WESTERMAN - CITY CLERK

(SEAL)
Virgian H. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of December, 1980, at the hour of 11:30 o'clock P. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 10th day of December 1980, at the hour of 3 o'clock P. M., E.S.T.

Winfield C. Moses, Jr.
WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-80-11-21

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS REFERRED AN
ORDINANCE approving an agreement for Engineering Services between
the City of Fort Wayne, Indiana and Howard, Needles,
Tammen & Bergendoff

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE is PASS.

PAUL M. BURNS, CHAIRMAN

BEN EISBART, VICE CHAIRMAN

JOHN NUCKOLS

MARK GiaQUINTA

ROY SCHOMBURG

CONCURRED IN

CHARLES W. WESTERMAN, CITY CLERK

DATE 12-9-80

70-36-27 H.I
11/5/80

AGREEMENT FOR STEP 3 ENGINEERING SERVICES

FOR

ADDITIONS AND IMPROVEMENTS
TO THE
WASTEWATER FACILITIES
PHASE A
PHASE B
PHASE C
ADVANCED WASTEWATER TREATMENT

BY AND BETWEEN THE

CITY OF
FORT WAYNE, INDIANA

AND

HOWARD NEEDLES TAMMEN & PERCENDOFF
ARCHITECTS ENGINEERS PLANNERS
INDIANAPOLIS, INDIANA

AGREEMENT

THIS AGREEMENT, by and between the CITY OF FORT WAYNE, INDIANA, acting by and through its Board of Public Works, hereinafter referred to as the OWNER, and HOWARD NEEDLES TAMMEN & BERGENDOFF, a partnership, hereinafter referred to as the Engineer, WITNESSETH THAT:

WHEREAS, the wastewater facilities of the OWNER are in need of certain improvements and/or additions pursuant to an Order of the State of Indiana; and

WHEREAS, the OWNER has prepared a Facility Plan, Drawings, and Specifications for said improvements and/or additions and pursuant to IC 19-2-5-1 et seq. intends to undertake the construction of same; and

WHEREAS, there are Federal and State grant funds available to assist in financing municipal wastewater facilities and the OWNER has received said grant for the ultimate construction of the project; and

WHEREAS, the ENGINEER agrees to perform for the project, professional services as hereinafter set forth, consistent with Title II Regulations 40 CFR Part 35; and

WHEREAS, the OWNER agrees to employ, and does hereby employ the ENGINEER for the professional services hereinafter set forth, and agrees to pay the ENGINEER for such services the fee as hereinafter set forth in this Agreement.

ARTICLE 1. THE ENGINEER'S SERVICES

A. Beginning upon acceptance by the OWNER of the Federal Step 3 grant-in-aid offer and authorization to proceed from the OWNER, the ENGINEER shall provide for a period not to exceed 1010 calendar days the services described as follows:

1. Assist the OWNER in obtaining and evaluating construction proposals.

2. Provide periodic visits to the project during construction to observe the progress of the work, and to inform the OWNER whether or not the work is proceeding in reasonable compliance with the drawings and specifications and to advise the OWNER if it is necessary to disapprove the work as failing to conform with the contract documents.

3. Check shop drawings, supplies, equipment, and other information submitted by the construction contractor for compliance with the design concept of the drawings and specifications.

4. Act upon the construction contractor's request for payments in accordance with the provisions of the General Conditions of the Construction Contract(s). (See Exhibit "A".)

5. Witness and fully report to the OWNER the results of all special performance tests required for the project.

6. Evaluate project changes as necessary, prepare design and non-design change orders to the construction contract(s).

7. Decide questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of drawings and specifications, and all questions as to the acceptable fulfillment of the construction contract(s).

8. Certify substantial completion and approval of the construction contractor's final payment when the terms of the construction contract(s) have been fulfilled.

9. Provide one set of record drawings which reflect changes in the work subsequent to the award of the construction contract(s) following the completion of the work and based upon information supplied by the construction contractor(s) and Owner's construction inspectors.

B. The ENGINEER shall provide ten (10) copies of an Operation and Maintenance Manual to the OWNER for the project in a form suitable for approval by the State and Federal agencies.

C. Beginning upon completion of the construction contract(s), the ENGINEER shall provide on-site technical assistance during the project start-up period for 40 working days over a period not to exceed 120 calendar days.

D. The ENGINEER shall not be responsible for the methods, means, techniques, sequences or procedures, or of any safety precautions or programs employed by the construction contractor, nor shall the ENGINEER be required to direct or take charge of work done by "force account."

E. Additional services in connection with the project not otherwise provided for in this Agreement may be arranged for between the ENGINEER and the OWNER and incorporated into this Agreement.

ARTICLE 2. DUTIES OF THE BOARD. The OWNER agrees to provide the ENGINEER with complete information concerning the requirements of the project and to perform as follows:

A. Provide access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform such work as surveys and inspections in the development of the project.

B. Give thorough consideration to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the ENGINEER, and shall inform the ENGINEER of all decisions within a reasonable time so as not to delay the work of the ENGINEER.

C. Promptly hold all required special meetings, serve all required public and private notices, receive and act upon all protests, and fulfill all requirements necessary in the development of the project including legal and fiscal services and pay all costs incidental thereto.

D. Advertise for invitation to bid from bidders, open the bids at the appointed time, and place and pay all costs incidental thereto, including filing fees and permit charges.

E. Appoint in writing an OWNER'S representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, and interpret and define OWNER'S policies. The ENGINEER shall be entitled to rely on all representations made by the OWNER'S representative, unless otherwise directed in writing by the OWNER.

F. Sign and file for all necessary approvals from regulatory agencies and to pay all cost incidental thereto.

G. Upon notice, promptly inform the ENGINEER of any changes or defects in the project.

H. Furnish all labor and be responsible for any necessary operations of the equipment and appurtenances of the existing facilities as may be required by the ENGINEER.

I. Furnish all required construction inspectors at the project site and appoint in writing an OWNER'S representative to coordinate construction inspection activities with the ENGINEER. The OWNER shall obtain from the ENGINEER prior to initiation of construction a schedule for coordinating these construction inspection activities.

ARTICLE 3. PAYMENT TO THE ENGINEER. For the services rendered under this Agreement, the ENGINEER shall be paid a fixed fee and its cost. Cost shall be determined as direct salaries times an audited overhead factor in effect at the time services are performed, which includes fringe benefits, and general administrative overhead, plus out-of-pocket expenses, equipment rental, and other expenses per the schedule of charges for expenses, current at the time services are rendered. (See Exhibit "B".)

A. The estimated cost of services for Articles 1-A, 1-B, and 1-C is \$404,768.00; the fixed fee is \$60,540.00; and the total estimated cost and fixed fee is \$465,308.00.

It is estimated that these costs to the OWNER for the performance of the aforementioned services, exclusive of the fixed fee, will not exceed the estimated cost as provided above; and the ENGINEER agrees to use its good faith effort to perform said work within such estimated cost. If, at any time as the work progresses, the ENGINEER has reason to believe that the cost will be greater than the estimated cost hereof, the ENGINEER shall notify the OWNER and agencies which have tendered grants in writing to that effect, giving the revised estimate of such cost for said work.

For billing purposes, the ENGINEER shall use its projected overhead factor if the actual audited overhead factor has not been determined at the time services are performed. Appropriate adjustments to reflect an increase or decrease in said overhead shall be made upon determination of the actual audited overhead factor.

The OWNER shall not be obligated to reimburse the ENGINEER for costs incurred in excess of the estimated cost set forth above, and the ENGINEER shall not be obligated to continue performance of said work or

otherwise to incur costs in excess of the estimated cost set forth above, unless and until the OWNER shall have notified the ENGINEER in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the revised estimated cost of said work. When and to the extent that the estimated cost set forth has been increased, any costs incurred by the ENGINEER in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase.

ARTICLE 4. DESIGN CREDIT. Whenever renderings, photographs of renderings, photographs of models, or photographs of the project are released by the OWNER for publicity, proper credit for engineering shall be given to the ENGINEER, provided the giving of such credit is without cost to the OWNER.

ARTICLE 5. SUCCESSORS AND ASSIGNMENTS. The OWNER and the ENGINEER each binds himself, his partners, successors, executors, administrators, and assigns to the other party to this Agreement, and to the partners, successors, executors, administrators, and assigns of such party in respect to all covenants of the Agreement. Any subcontracting by the ENGINEER shall be in accordance with applicable Federal and State law and the General Conditions to this Agreement.

ARTICLE 6. OWNERSHIP OF DOCUMENTS. All reports and other work product of the ENGINEER for this Project are instruments of service for this Project only and shall remain the property of the ENGINEER whether the Project is completed or not, except as provided for in the General Conditions to this Agreement. None of any of the instruments of service of

the ENGINEER by the OWNER on extensions of this Project or on any other project without the written permission of the ENGINEER shall be at the OWNER'S risk, and the OWNER agrees to defend, indemnify, and hold harmless the ENGINEER from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse of the ENGINEER'S instruments of service by the OWNER or by others acting through the OWNER.

ARTICLE 7. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of Indiana. Should litigation or arbitration occur between the OWNER and the ENGINEER relating to the provisions or breaches of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorney's fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

ARTICLE 8. EXHIBIT. Attached hereto and made a part of this Agreement is Exhibit "A", General Conditions to Engineering Service Contracts.

ARTICLE 9. PERSONNEL & FACILITIES. The ENGINEER estimates that the performance of the aforementioned services will require the number and class of employees as follows:

a. Principal Engineer	<u>1</u>
b. Project Manager	<u>1</u>
c. Assistant Project Manager	<u>1</u>
d. Chief Designer/Designer	<u>2</u>
e. Civil Engineer Technician	<u>1</u>
f. Secretary	<u>1</u>

The services will be performed from the Indianapolis, Indiana office provided, however, the ENGINEER reserves the right to change the

number and/or class of employees and the office where the work will be performed if said changes are required so as not to delay the work, because of prolonged employee absence or resignations.

The ENGINEER agrees to implement 40 CFR 25.936-7 and to satisfy the Region V Guidance for increased use of Minority Business Enterprises (MBE) dated April 30, 1979. Documentation will be submitted to the OWNER by the ENGINEER prior to the start of the work. The OWNER has set a goal of 10% utilization of MBE expressed as a percent of the total dollar amount of this contract. The OWNER assumes primary responsibility to achieve an acceptable level of MBE use.

ARTICLE 10. EXECUTION. The OWNER and the ENGINEER hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate this 5th day of November, 1980.

HOWARD NEEDLES TAMMEN & BERGENDOFF
Architects Engineers Planners

By George K. Gaurani

CITY OF FORT WAYNE, INDIANA

By Winfield G. Moser, Jr.

Mayor

By Robert E. Smith

Robert E. Smith
Its Board of Public Works

ATTEST:

Sandra E. Kennedy
Clerk

EXHIBIT "A"

GENERAL CONDITIONS

1. General

- (a) The Owner and the Engineer agree that the following provisions shall apply to the EPA grant-eligible work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.
- (b) The work under this agreement is funded in part by a grant from the U. S. Environmental Protection Agency. Neither the United States nor the U. S. Environmental Protection Agency (hereinafter, "EPA") is a party to this agreement. This agreement which covers grant-eligible work is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939 in effect on the date of execution of this agreement. As used in these clauses, the words "the date of execution of this agreement" mean the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.
- (c) The rights and remedies of the owner provided for in these clauses are in addition to any other rights and remedies provided by law or under this agreement.

2. Responsibility of the Engineer

- (a) The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports and other services furnished by the Engineer under this agreement. The Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.
- (b) The Engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements in effect on the date of execution of this agreement.
- (c) Approval by the Owner or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the technical adequacy of his work. Neither the Owner's nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

- (d) The Engineer shall be and remain liable in accordance with applicable law for all damages to the Owner or EPA caused by the Engineer's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the Owner, Owner-furnished data or any third party. The Engineer shall not be responsible for any time delays in the project caused by circumstances beyond the Engineer's control. Where new or advanced processes, methods or technology (see 40 CFR 35.908) are recommended by the Engineer and are utilized, the Engineer shall be liable only for gross negligence to the extent of such utilization.

3. Scope of Work

The services to be rendered by the Engineer shall include all services required to complete the task or Step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E in effect on the date of execution of this agreement) to the extent of the scope of work as defined and set out in the engineering services agreement to which these provisions are attached.

4. Changes

- (a) The Owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Engineer of the notification of change unless the Owner grants a further period of time before the date of final payment under this agreement.
- (b) No services for which an additional compensation will be charged by the Engineer shall be furnished without the written authorization of the Owner.
- (c) In the event that there is a modification of EPA requirements relating to the services to be performed under this agreement subsequent to the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.

5. Termination

- (a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party: Provided, That no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (b) This agreement may be terminated in whole or in part in writing by the Owner for its convenience: Provided, That such termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new Step) and that the Engineer is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (c) If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the Owner by reason of the Engineer's default. If termination for default is effected by the Engineer, or if termination for convenience is effected by the Owner, the equitable adjustment shall include a reasonable profit for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.
- (d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Engineer in performing this agreement, whether completed or in process.
- (e) Upon termination pursuant to paragraphs (a) or (b) above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work

taken over by the Owner for completion will be completed at the Owner's risk, and the Owner will hold harmless the Engineer from all claims and changes arising out of improper use of the Engineer's work.

- (d) If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.

6. Remedies

Except as may be otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of or relating to this agreement or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

7. Payment

- (a) Payment shall be made in accordance with the payment schedule incorporated in this agreement as soon as practicable upon submission of statements requesting payment by the Engineer to the Owner. If no such payment schedule is incorporated in this agreement, the payment provisions of paragraph (b) of this clause shall apply.
- (b) Monthly progress payments may be requested by the Engineer and shall be made by the Owner to the Engineer as soon as practicable to upon submission of statements requesting payment by the Engineer to the Owner. When such progress payments are made, the Owner may withhold up to ten percent of the vouchered amount until satisfactory completion by the Engineer of work and services within a Step called for under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Owner, he shall release to the Engineer such excess amount.
- (c) No payment request made pursuant to paragraph (a) or (b) of this clause shall exceed the estimated amount and value of the work and services performed by the Engineer under this agreement, which estimates shall be prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the Owner.
- (d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the Owner a release of all claims against the Owner

arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the Engineer from the operation of the release in stated amounts to be set forth therein.

8. Project Design

- (a) In the performance of this agreement, the Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13 in effect on the date of execution of this agreement except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908 in effect of the date of execution of this agreement.
- (b) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Engineer to be available only from a sole source, unless such use has been adequately justified in writing by the Engineer.
- (c) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of Sec. 204(a)(6) of the Federal Water Pollution Control Act (PL 92-500). This statute requires that no specification for bids or statement of work shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal". With regard to materials, if a single material is specified, the Engineer must be prepared to substantiate the basis for the selection of the material.
- (d) The Engineer shall report to the Owner any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.
- (e) The Engineer shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.

9. Audit: Access to Records

- (a) The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935-7 in effect on the date of execution of this agreement. The Engineer shall also maintain the financial information and data used by the Engineer in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) in effect on the date of execution of this agreement and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and the State water pollution control agency, or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Engineer will provide proper facilities for such access and inspection.
- (b) The Engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all their sub-contracts directly related to project performance which are in excess of \$10,000.
- (c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- (d) The Engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above, provided that the Engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Engineer.
- (e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on EPA grant work under this agreement and until three years from date of final EPA grant payment for the project. In addition, those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

10. Price Reduction for Defective Cost or Pricing Data

(This clause is applicable if the amount of this agreement exceeds \$100,000).

- (a) If the Owner or EPA determines that any price, including profit, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the Engineer or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700-41), then such price or cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.
- (b) Failure to agree on a reduction shall be subject to the Remedies clause of this agreement.

(NOTE - Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

11. Subcontracts

- (a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically authorized by the Owner during the performance of this agreement. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior approval of the Owner.
- (b) The Engineer may not subcontract services in excess of thirty percent (or _____ percent, if the Owner and the Engineer hereby agree) of the contract price to subcontractors or consultants without prior written approval of the Owner.

12. Labor Standards

To the extent that this agreement involves "construction" (as defined by the Secretary of Labor), the Engineer agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

- (a) Davis-Bacon Act (40 U.S.C. 276a-276a-7);
- (b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);
- (c) Copeland Anti-Kickback Act (18 U.S.C. 874); and
- (d) Executive Order 11246 (Equal Employment Opportunity);

and implementing rules, regulations, and other relevant orders of the Secretary of Labor or EPA; and the Engineer further agrees that this agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this agreement.

13. Equal Employment Opportunity

In accordance with EPA policy as expressed in 40 CFR 30.429-5, the Engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. Utilization of Small and Minority Business

In accordance with EPA policy as expressed in 40 CFR 35.936-7, the Engineer agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. Covenant Against Contingent Fees

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the Owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

16. Gratuities

- (a) If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Engineer, or any agent

or representative of the Engineer, to any official, employee or agent of the Owner, of the State, or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this agreement, the Owner may, by written notice to the Engineer, terminate the right of the Engineer to proceed under this agreement or may pursue such other rights and remedies provided by law or under this agreement: Provided, That the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this agreement.

- (b) In the event this agreement is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the Engineer in providing any such gratuities to any such officer or employee.

17. Patents

If this agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, in effect on the date of execution of this agreement, including Appendix B of said Part 30. In such case, the Engineer shall report the discovery or invention to EPA directly or through the Owner, and shall otherwise comply with the Owner's responsibilities in accordance with said Subpart D of 40 CFR Part 30. The Engineer hereby agrees that the disposition of rights to invention made under this agreement shall be in accordance with the terms and conditions of aforementioned Appendix B. The Engineer shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

18. Copyrights and Rights in Data

- (a) The Engineer agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with EPA grant funds), technical reports, operating manuals, and other work submitted with a Step 1 Facilities Plan or with a Step 2 or Step 3 grant application or which

are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement (referred to in this clause as "Subject Data") are subject to the rights in the United States, as set forth in Subpart D of 40 CFR Part 30 and in Appendix C to 40 CFR Part 30, in effect on the date of execution of this agreement, including the right to use, duplicate and disclose, such Subject Data, in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this article, "grantee" as used in said Appendix C shall refer to the Engineer. If the material is copyrightable, the Engineer may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the Owner and the Federal Government reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The Engineer shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts expected to produce copyrightable Subject Data.

- (b) All such Subject Data furnished by the Engineer pursuant to this agreement are instruments of his services in respect of the project. It is understood that the Engineer does not represent such Subject Data to be suitable for reuse on any other project or for any other purpose. Any reuse by the Owner without specific written verification or adaptation by the Engineer will be at the risk of the Owner and without liability to the Engineer. Any such verification or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Owner and the Engineer.

SCHEDULE OF CHARGES FOR EXPENSES

1. Automobile travel by personal or company leased vehicles is chargeable at 20 cents per mile. Use of rail, bus, air or similar forms of public transportation or automobile rental will be billed at cost.
2. Charges shall be made for such direct expenses as blue printing costs, the cost of materials required to complete field investigations or surveys, or other special materials or equipment whose use will be limited to the specific job at hand. These charges will be billed at invoice cost.
3. Subsistence is chargeable in the event an employee is required by nature or location of the work to be out of his assigned office overnight. These charges shall be billed at direct cost.
4. Services of Professional specialists who work independently of Howard Needles Tammen & Bergendoff shall be billed at our cost. Examples of this type of service are soils testing, laboratory analyses, and other specialized fields of service performed by others using their own facilities, and not under our direction. Services of subcontractors or subconsultants who work at the direction of HNTB shall be billed at our cost plus ten percent.
5. Charges shall be made for the use of special studies equipment as follows:
 - (a) Field Survey Van and Sewer Inspection Vehicle (including inspection and safety equipment) 35 cents per mile or \$25.00 per day, whichever is greater.
 - (b) Head Recorders
\$25.00 per week for the first four (4) weeks of continuous installation.
\$15.00 per week for the next four (4) weeks of continuous installation.
\$10.00 per week for continuous installation, thereafter (1 - 7 days constitute one week).
 - (c) Integrated Flow Recorders
\$40.00 per week for the first four (4) weeks of continuous installation.
\$25.00 per week for the next four (4) weeks of continuous installation.

HNTB
Sept. 1, 1980

SCHEDULE OF CHARGES FOR EXPENSES (Cont'd)

- | | |
|--|---|
| (c) Integrated Flow Recorders
(continued) | \$15.00 per week for continuous
installation thereafter (1 - 7
days constitute one week). |
| (d) Continuous Samplers | \$40.00 per week for the first
four (4) weeks of continuous
installation. |
| | \$25.00 per week for the next
four (4) weeks of continuous
installation. |
| | \$15.00 per week for continuous
installation thereafter (1 - 7
days constitute one week). |
| (3) Other Equipment | To be quoted on a per job basis. |
6. All service performed on an hourly or cost plus basis shall be billed as work progresses. Billing periods shall be once each four weeks to coincide with firm's payroll cycle.

The above schedule of charges is subject to changes which result from variations in supplier costs and market conditions.

HOWARD NEEDLES TAMMEN & BERGENDOFF
ARCHITECTS ENGINEERS PLANNERS
INDIANAPOLIS, INDIANA
Sept. 1, 1980

TITLE OF ORDINANCE Agreement for Step 3 Engineering Services of Howard Needles Tammen & Bergendoff, for Additions and Improvements to the Wastewater Facilities Advanced Wastewater Treatment Plant.
5070
DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS 1-80-11-21

SYNOPSIS OF ORDINANCE Agreement for Step 3 Engineering Services for Additions and Improvements to the Wastewater Facilities Phase A, Phase B, Phase C of the Advanced Wastewater Treatment Plant. Howard Needles Tammen & Bergendoff (Engineers)

EFFECT OF PASSAGE The wastewater facilities of the City of Fort Wayne are in need of certain improvements and/or additions pursuant to an Order of the State of Indiana.

EFFECT OF NON-PASSAGE Above improvements and/or additions cannot be met.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \$464,909.00 is the total estimated cost and fixed fee. 75% to be paid for by the EPA and 25% is paid for by City Utilities.

ASSIGNED TO COMMITTEE _____